

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Frank Montgoris	Team: APU	CCRB Case #: 201703752	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 05/10/2017 10:19 PM	Location of Incident: Kelly Street and East 156th Street; Outside of § 87(2)(b)	Precinct: 41	18 Mo. SOL 11/10/2018	EO SOL 11/10/2018	
Date/Time CV Reported Thu, 05/11/2017 12:01 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 05/11/2017 12:01 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Dany Fana	00733	944547	041 PCT
2. SGT Justin Marzan	4343	949275	041 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Erickson Ramirez	03969	954260	041 PCT
2. POM Jorge Rodriguez	13545	952177	041 PCT
3. POM Wojciech Czech	17253	954684	041 PCT
4. POF Lawrice Crawford	01943	954676	041 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Justin Marzan	Abuse: At East 156th Street and Kelly Street, in the Bronx, Sergeant Justin Marzan stopped § 87(2)(b)	§ 87(2)(b)
B.SGT Justin Marzan	Abuse: At East 156th Street and Kelly Street, in the Bronx, Sergeant Justin Marzan frisked § 87(2)(b)	§ 87(2)(b)
C.SGT Justin Marzan	Abuse: At East 156th Street and Kelly Street, in the Bronx, Sergeant Justin Marzan searched § 87(2)(b)	§ 87(2)(b)
D.SGT Justin Marzan	Abuse: At East 156th Street and Kelly Street, in the Bronx, Sergeant Justin Marzan searched § 87(2)(b)'s bag.	§ 87(2)(b)
E.SGT Dany Fana	Abuse: In front of § 87(2)(b), in the Bronx, Sergeant Dany Fana threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
F.SGT Dany Fana	Force: In front of § 87(2)(b), in the Bronx, Sergeant Dany Fana used physical force against § 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via telephone on May 11, 2017. The same day, § 87(2)(b) filed a duplicate complaint with IAB, generating log number 17-17710.

On May 10, 2017, at 10:19 p.m., officers from the 41st Precinct received a radio run for a male individual with a firearm at Kelly Street and East 156th Street, in the Bronx, and Sgt. Justin Marzan stopped § 87(2)(b) upon arriving on the scene (**Allegation A**). Sgt. Marzan allegedly frisked and searched § 87(2)(b) during the stop, and also searched § 87(2)(b)'s backpack (**Allegations B, C, and D**). § 87(2)(b) was ultimately released without being arrested or issued a summons.

Later that night, at approximately 11:12 p.m., § 87(2)(b) observed Sgt. Dany Fana and PO Erickson Ramirez, from the 41st Precinct, driving on Leggett Avenue and Fox Street, in the Bronx. § 87(2)(b) stood in the street, blocking the officers' vehicle. § 87(2)(b) threw an object at the vehicle, which resulted in both Sgt. Fana and PO Ramirez exiting the vehicle. Sgt. Fana pointed his taser at § 87(2)(b) and then punched § 87(2)(b) in the face (**Allegations E and F**). Sgt. Fana then kicked § 87(2)(b) and punched him three additional times (**Within Allegation F**). § 87(2)(b) was handcuffed and transported to § 87(2)(b), where he received treatment for swelling to his left eye. No arrests or summonses resulted from this incident.

An APU Prosecutor was consulted regarding the force allegation of this complaint.

This case exceeded the 90-day benchmark by two weeks because it included FADO allegations stemming from multiple incident locations and numerous officer interviews.

Security video footage of § 87(2)(b)'s interaction with Sgt. Fana and PO Ramirez was obtained from § 87(2)(b) (Board Review 24). The footage was edited via Snag-It, and is embedded below:



201703752_20170515_1031_DM.mp4

Mediation, Civil, and Criminal Histories

- This case was unsuitable for mediation because of the injury § 87(2)(b) sustained to his eye as a result of the incident.
- § 87(2)(b) § 87(2)(c)
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§ 87(2)(b) § 87(2)(c)
§ 87(2)(b) § 87(2)(c)
- As of August 16, 2017, § 87(2)(b) has not filed a Notice of Claim against the City of New York (Board Review 02).

Civilian and Subject Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (Board Review 03).
- Sgt. Marzan has been a member of the NYPD for seven years. Sgt. Marzan has been the subject of two prior allegations stemming from Case #201110989, which were both closed as complainant uncooperative. § 87(2)(g)
§ 87(2)(g)

- Sgt. Fana has been a member of the NYPD for 10 years. Sgt. Fana has been the subject of 39 prior allegations stemming from 17 cases. There has been one stop allegation substantiated against Sgt. Fana from Case #200906896, in which he received instructions from the NYPD. § 87(2)(g)

Potential Issues

- Though § 87(2)(b) never alleged during his in-person statement that Sgt. Fana pointed his taser at him in front of § 87(2)(b), Sgt. Fana acknowledged this action in his in-person statement, and the action was captured on security video footage. § 87(2)(g)
- While § 87(2)(b) mentioned in his in-person statement that his mother, § 87(2)(b) witnessed Sgt. Fana's use of force against him, security video footage captured all relevant portions of § 87(2)(b)'s interaction with Sgt. Fana. § 87(2)(g)

Findings and Recommendations

Explanation of Subject Officer Identification

- § 87(2)(b) alleged in his in-person statement that the officer who approached him, frisked him, searched him, and searched his bag at the intersection of Kelly Street and East 156th Street was a 5'5" tall, skinny, brown-skinned black male, who had slicked black hair and a shaped-up beard. Although Sgt. Marzan, who is a 5'8" tall, 170-pound Hispanic male with brown hair, according to his CCRB pedigree sheet, does not fit § 87(2)(b)'s physical description, he acknowledged in his in-person statement that he mainly interacted with § 87(2)(b) during the stop and searched his bag § 87(2)(g)

Allegation A – Abuse of Authority: At East 156th Street and Kelly Street, in the Bronx, Sergeant Justin Marzan stopped § 87(2)(b)

It is undisputed that Sgt. Marzan stopped § 87(2)(b) at the intersection of Kelly Street and East 156th Street. § 87(2)(g)

§ 87(2)(b) alleged that he was by himself doing pull-ups on scaffolding at the intersection when Sgt. Marzan and PO Jorge Rodriguez pulled up in their vehicle. Sgt. Marzan approached § 87(2)(b) and asked him what he was doing, and § 87(2)(b) replied that he was "getting his mind right." PO Wojciech Czech and PO Lawrice Crawford, of the Anti-Crime unit, then drove up in an unmarked vehicle, so § 87(2)(b) began to walk towards their vehicle. PO Crawford told him to stop walking and requested his identification, while § 87(2)(b) remained seated in her vehicle. § 87(2)(b) then placed his identification on the floor. The officers ultimately left without arresting § 87(2)(b) or issuing him a summons (Board Review 04).

Sgt. Marzan testified that the officers received a radio run for a male with a firearm at the intersection of Kelly Street and East 156th Street, which included a description of the individual that Sgt. Marzan could not recall at the time of his interview. When the officers arrived on scene approximately two to three minutes after receiving the call, Sgt. Marzan observed § 87(2)(b) the only civilian on scene, standing underneath the scaffolding talking to himself and fitting the

description given by the radio run, but Sgt. Marzan did not recall what § 87(2)(b) was wearing or what it was about his appearance that fit the description. He denied that anyone ever approached the officers to identify themselves as the 911 caller, and denied that he was successfully able to contact the caller via the callback number. Sgt. Marzan, who was the first unit on scene, asked § 87(2)(b) from the vehicle, “Hey, what’s going on?” § 87(2)(b) responded, “Guys are following me.” Sgt. Marzan then approached § 87(2)(b) and did not observe any bulges on him, and observed his clothing was similar to “summer clothes.” Sgt. Marzan acknowledged that there was no indication, based on these observations, that § 87(2)(b) was in possession of a firearm. Sgt. Marzan informed § 87(2)(b) that he fit the description of somebody carrying a firearm, but § 87(2)(b) did not respond. Sgt. Marzan then asked § 87(2)(b) for identification, and § 87(2)(b) ultimately pulled out his wallet and dropped it on the floor. Sgt. Marzan then walked over to the wallet, and retrieved the identification from the wallet. After listening to the audio recording of the radio run during his CCRB interview, in which dispatch mentioned the individual in question waving an object at passersby, Sgt. Marzan denied seeing § 87(2)(b) wave anything or holding anything upon first observation (Board Review 05).

PO Rodriguez stated that when the officers responded to the intersection, § 87(2)(b) was already stopped by the Anti-Crime unit, including Sgt. Fana. However, PO Rodriguez could not recall what other officers from the unit were there. PO Rodriguez did not observe any bulges on § 87(2)(b) but did not recall what § 87(2)(b) was wearing (Board Review 06). Both PO Crawford and PO Czech testified that, by the time they responded to the scene, § 87(2)(b) was already stopped by other uniformed officers. Neither officer was able to recall whether § 87(2)(b)'s identification was ever requested (Board Reviews 07 and 08). Sgt. Fana and PO Ramirez both remembered the radio run on the night of the incident, but ultimately denied responding to the location (Board Reviews 09 and 10).

The ICAD generated for the incident indicated that an anonymous female caller dialed 911 and stated that a young black male in his early 20s, wearing a durag and dark clothing was screaming and possibly had a firearm; though the caller did not see a firearm. The Patrol Supervisor was noted on the ICAD arriving at the scene at 10:20 p.m. (Board Review 11).

The Police Radio Communications audio illustrated that, at 10:19 p.m., dispatch relayed over the radio to Sgt. Marzan that there was a 10-10 call for a black male individual with a firearm at Kelly Street and East 156th Street. Dispatch states in the audio that the female caller did not see a firearm, and that the description was of a black male wearing a durag and dark-colored clothing, appearing in his early-20s. Dispatch includes that the individual is waving “something” at passersby (Board Review 12).

An officer may stop an individual when he reasonably suspects that a person has committed, is committing, or is about to commit a crime. People v. DeBour, 40 N.Y.2d 210; 352 N.E. 2nd 562 (1976). An anonymous tip, without more, will not constitute reasonable suspicion to forcibly stop an individual. People v. Crea, 126 A.D.2d 556 (1987). Such information can only justify a common-law right to inquire. Id. Anonymous tips can form the basis for reasonable suspicion only if accompanied by specific indicia of reliability, or the correct prediction of a subject’s “not easily predicted” movements. Florida v. J.L., 529 U.S. 266 (2000). Information obtained from an anonymous source must corroborate both the identity of the suspect as well as the criminality of the suspect’s conduct. Id. An officer’s own observations can provide objective independent proof of the reliability of an anonymous tip, and could therefore support a reasonable suspicion. People v. Cobb, 208 A.D.2d 453 (1994) (Board Reviews 13, 14, 15, and 16).

§ 87(2)(g)

[REDACTED]

Allegation B – Abuse of Authority: At East 156th Street and Kelly Street, in the Bronx, Sergeant Justin Marzan frisked § 87(2)(b)

Allegation C – Abuse of Authority: At East 156th Street and Kelly Street, in the Bronx, Sergeant Justin Marzan searched § 87(2)(b)

Allegation D – Abuse of Authority: At East 156th Street and Kelly Street, in the Bronx, Sergeant Justin Marzan searched § 87(2)(b) s bag.

It is undisputed that Sgt. Marzan searched § 87(2)(b) s backpack. § 87(2)(g)

[REDACTED]

§ 87(2)(b) alleged that, after he placed his identification on the ground, Sgt. Marzan patted his chest, waist, and both of his legs. He then entered the front and back pockets of § 87(2)(b) s jeans, removing only his cell phone before putting it back. Sgt. Marzan then asked § 87(2)(b) what he had in his bag, which was approximately four to five feet away and leaning up against the wall. § 87(2)(b) responded, “I don’t have nothing in my bag.” Sgt. Marzan then approached the bag and ran his hand through the open top zipper pocket, but did not remove anything from the bag. § 87(2)(b) denied providing consent to Sgt. Marzan to search the bag (Board Review 04).

Sgt. Marzan testified that, because he had no indication that § 87(2)(b) was in possession of a firearm from his own observations, as previously discussed, he did not frisk or search § 87(2)(b) s person. Sgt. Marzan stated that, when he asked § 87(2)(b) for his identification, § 87(2)(b) initially told Sgt. Marzan that it was in his backpack, and told Sgt. Marzan to “go get it.” Sgt. Marzan then opened the top zipper pocket of the bag and did a visual inspection of what was inside. It was at this point that § 87(2)(b) told Sgt. Marzan that his identification was in his pocket, and dropped the wallet on the ground (Board Review 05).

PO Rodriguez, who vaguely remembered this incident, stated that Sgt. Fana told § 87(2)(b) that the officers were searching him for “safety purposes,” and Sgt. Marzan then patted § 87(2)(b) down around his waistband area, his armpits, and his chest area. PO Rodriguez did not

recall whether Sgt. Marzan entered any of § 87(2)(b)'s pockets. Sgt. Marzan had asked § 87(2)(b) if the backpack that was lying against the wall of the nearby deli was his, and § 87(2)(b) said yes; though PO Rodriguez did not remember what else was discussed in regards to this backpack. Sgt. Marzan then walked over to the backpack, felt it from the outside, opened it, and looked inside. During the incident, other civilians whom PO Rodriguez believed to be § 87(2)(b)'s family members, came out and spoke to PO Rodriguez and explained to him that § 87(2)(b) was “not all there.” PO Rodriguez denied having any additional interaction with § 87(2)(b) on this night after this stop (Board Review 06).

Neither PO Crawford nor PO Czech was able to recall whether § 87(2)(b) was frisked during the incident. PO Czech denied that Sgt. Marzan entered § 87(2)(b)'s pockets in his presence, while PO Crawford did not recall whether Sgt. Marzan did so. Neither officer recalled seeing Sgt. Marzan look in § 87(2)(b)'s backpack, and neither officer recalled seeing any other civilians on scene (Board Reviews 07 and 08). As previously stated, Sgt. Fana and PO Ramirez denied responding to the location (Board Reviews 09 and 10).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Allegation E – Abuse of Authority: In front of § 87(2)(b), Sergeant Dany Fana threatened § 87(2)(b) with the use of force.

§ 87(2)(b) alleged that he was crossing Leggett Avenue when he saw the officers drive down the block. Nothing was said by either party at this point, but the officers stopped their vehicle in the middle of the street. Sgt. Fana and PO Ramirez then exited the vehicle. § 87(2)(b) denied dropping or throwing anything on the officers' vehicle at any point. Upon initially filing this complaint, however, § 87(2)(b) stated that his phone “dropped” on the officers' vehicle. As previously discussed in the Potential Issues section, § 87(2)(b) did not allege that Sgt. Fana

pointed his taser at him but through video footage and Sgt. Fana's testimony, he was determined to have done so (Board Reviews 04 and 18).

Sgt. Fana testified that as he and PO Ramirez passed the intersection of Leggett Avenue and Fox Street, he observed § 87(2)(b) standing in the street, blocking the path of the officers' vehicle. § 87(2)(b) yelled phrases including, "I hate you cops," "I'm going to shoot you," and, "Get out of the car." § 87(2)(b) then walked towards the passenger's side of the vehicle and kept screaming, "Get out of the car. I hate you." Sgt. Fana told § 87(2)(b) two or three times to get out of the street, but § 87(2)(b) did not respond and instead pulled his pants up and raised his fists. § 87(2)(b) then spit at the vehicle, and kicked the back right panel of the vehicle as the officers began to drive away. Sgt. Fana, who deemed § 87(2)(b) to be an emotionally disturbed person (EDP) because of his actions which were not normal behavior, exited the vehicle with the intent on taking § 87(2)(b) into custody and transporting him to the hospital. Sgt. Fana drew his taser and pointed it at § 87(2)(b). Sgt. Fana believed this to be the most appropriate tool as a result of § 87(2)(b)'s behavior and aggressive stance towards the officers. After reviewing the video footage, Sgt. Fana confirmed that he remembered pulling his taser out upon approaching § 87(2)(b) (Board Review 09).

PO Ramirez corroborated Sgt. Fana's testimony in regards to § 87(2)(b)'s behavior of standing in the middle of the street and threatening to kill the officers. PO Ramirez further corroborated that § 87(2)(b) spit and kicked at the vehicle. He stated that, upon exiting the vehicle, Sgt. Fana mentioned to § 87(2)(b) the possibility of using his taser, but could not recall whether Sgt. Fana ever pulled his taser out. After reviewing the video footage, however, he clarified that he believed the object Sgt. Fana is seen holding upon initial approach of § 87(2)(b) was a taser (Board Review 10).

The security video footage obtained, which is three minutes and 46 seconds long, shows § 87(2)(b) walking into the middle of the street and making an apparent fighting gesture by extending his neck out twice towards the officers' vehicle. § 87(2)(b) stands in the middle of the street for a few seconds, blocking the officers' vehicle. § 87(2)(b) is then seen disappearing behind the vehicle, on the passenger's side, reappearing as the officers begin to drive away. § 87(2)(b) then throws an object at the vehicle, resulting in Sgt. Fana and PO Ramirez exiting the vehicle. Sgt. Fana is seen holding a light-colored object, pointed at § 87(2)(b) in his left hand (Board Review 24).

Conducted Electrical Weapons (CEW) may be used to subdue individuals who are actively physically resisting, exhibiting active aggression, or to prevent an individual from injuring themselves or another individual. NYPD Patrol Guide, Procedure 221-08 (Board Review 17).

§ 87(2)(g)
[REDACTED]

Allegation F – Force: In front of § 87(2)(b), in the Bronx, Sergeant Dany Fana used physical force against § 87(2)(b)

§ 87(2)(g)
§ 87(2)(b) alleged that when Sgt. Fana and PO Ramirez exited their vehicle, Sgt. Fana yelled, “Get on the floor! Get on the floor!” Sgt. Fana then immediately punched § 87(2)(b) in his left cheek. § 87(2)(b) lost consciousness as a result, and was on the ground in handcuffs when he woke up (Board Review 04).

Sgt. Fana denied punching § 87(2)(b) or using any force to get him on the ground. Once § 87(2)(b) was on the ground, PO Ramirez attempted to place him in handcuffs, but § 87(2)(b) began to push up from the ground and grabbed PO Ramirez in an attempt to pull him to the ground. Sgt. Fana then grabbed § 87(2)(b)'s right arm, and told him, “Stop resisting,” multiple times. § 87(2)(b) turned his head to face Sgt. Fana, and Sgt. Fana then punched § 87(2)(b) once in the face around his right cheek. After the single punch, the officers were ultimately able to get § 87(2)(b)'s hands in handcuffs. § 87(2)(b) never struck either officer at any point. After reviewing the security video footage, Sgt. Fana did not recall striking § 87(2)(b) prior to getting him on the ground, did not remember kicking § 87(2)(b) and only remembered striking § 87(2)(b) once. He stated he “might have” swung more than once (Board Review 09).

PO Ramirez stated that § 87(2)(b) clenched his fists and walked towards Sgt. Fana, and Sgt. Fana swung at § 87(2)(b) once with an open hand. No contact was made though, as § 87(2)(b) leaned away from Sgt. Fana's hand. PO Ramirez did not recall if Sgt. Fana ever struck § 87(2)(b) or attempted to strike § 87(2)(b) at any other point during the physical struggle to get him in handcuffs. Upon reviewing the video footage, PO Ramirez maintained that he did not see Sgt. Fana's actions at the time of the incident (Board Review 10).

The video footage obtained shows Sgt. Fana walk towards § 87(2)(b) who was standing in the street, and swing with his right hand at § 87(2)(b)'s head. § 87(2)(b) is then seen turning away and stumbling. § 87(2)(b) then falls down to one knee and, and Sgt. Fana kicks § 87(2)(b) once with his right leg and pushes him to the ground from behind him. Sgt. Fana and PO Ramirez are then seen standing over § 87(2)(b) who is prone on the ground with no apparent movements. It then appears that PO Ramirez rolls § 87(2)(b) over. Sgt. Fana, who is standing near § 87(2)(b)'s feet, bends over towards § 87(2)(b) while facing him, and strikes § 87(2)(b) three more times. At this point, § 87(2)(b)'s legs are the only visible part of his body, which are not seen moving (Board Review 24).

§ 87(2)(b)'s photo was taken at the CCRB two days after the incident, and displayed discoloration and swelling to his left eye (Board Review 19). The Ambulance Call Report (ACR) states that § 87(2)(b) presented swelling to the left side of his face. § 87(2)(b)'s medical documentation from § 87(2)(b) states that § 87(2)(b) sustained swelling to the left side of his face, and he was diagnosed with an unspecified injury of his face (See Privileged Documents).

An officer may use force to reasonably ensure the safety of a member of the service or a third person, to take a lawfully arrested person into custody, or to prevent one's escape from custody. Some factors to consider in determining when to use force are the actions taken by the subject, the immediacy of the perceived threat or harm to others, and whether initial de-escalation techniques used to gain voluntary compliance were successful. NYPD Patrol Guide, Procedure 221-01 (Board Review 20).

§ 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

§ 87(2)(g)

[REDACTED]

[REDACTED]

§ 87(4-b), § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(4-b), § 87(2)(g)

Squad: 7

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date